IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTIION

FAMILY COURT APPEAL NO. 33 of 2003

Sou.Hemangi Raju Chakranarayan
aged 28 years, Occ. household
r/a Talegaon Dhamdhere,
Taluka Shirur, District Pune .. **Appellant**
(Orig.Petitioner)

V/s

Shri Raju Kashinath Chakranarayan
age 29 years, Occ. service
r/a Kokar, Taluka Shrirampur
District Ahmednagar ... **Respondent**
(Orig. Respondent)

Adv. Mrs. A.A. Agarwal for Appellant
Adv. Smt. Smita Gaidhane for Respondent

CORAM: S.B.MHASE, AND
S.R.SATHE,JJ.
DATED:5th Sept. 2006

ORAL JUDGMENT :- (**Per S.R.Sathe,J.**)

1. Appellant-wife, the original Petitioner in

Marriage Petition NO.150 of 2000 has preferred this Appeal against the judgment and order passed by the Court of 6th Joint Civil Judge, S.D., Pune whereby the petition for divorce filed by wife against the Respondent husband on the grounds mentioned in Section 13(i)(ia) and (ib) i.e. cruelty and desertion respectively was dismissed. For the sake of convenience hereafter the parties shall be referred to as the Petitioner and Respondent.

. Brief facts giving rise to this appeal are as under:-

2. The Petitioner and Respondent were prosecuting their B.Ed. course at Adhyapan Mahavidyalaya, Bhor in the year 1997-98. Petitioner had taken a private room on lease at Bhor. Respondent had also taken another room in the area known as Bholwade. As both of them were studying in the same college and doing B.Ed course they came into contact with each other, intimacy developed and they fell in love with each other and decided to get married. According to the Petitioner, though she and Respondent no.3 were meeting each other on various occasions, her family members had no idea about their intimacy and love affair. As there was no possibility of the family members giving consent for their marriage, both, the Petitioner and Respondent decided to get married

stealthily at Alandi/Pune. Accordingly, on 1-2-1998 both of them went to Shrikrishna Mangal Karlayala, Alandi along with their 4 friends and Petitioner and Respondent got themselves married with each other as per Hindu Rites. The said marriage was also then registered with Registrar of Marriages on 24-3-1998.

3. It is petitioner's case that after marriage also both of them were residing separately at their respective rooms. One Surekha Nikam was the room partner of the Petitioner. She came in contact with Respondent's brother Subhash and both of them got married at Shrikrishna Mangal Karlaya on 20-3-1998. After completion of examination, Petitioner went to her native place at Talegaon Dhamedhere on 4-4-1998. According to her, though she was married on 1-2-1998 till the filing of the petition she was never wearing Mangalsutra and nor introducing herself as Mrs. Hemangi Raju Chakranarayan. She had not disclosed to her family members about their marriage even after the time she returned to Talegaon Dhamdhere.

4. It is Petitioner's case that on 22-5-1998 Respondent came to her house and told her that she should accompany him to his house and he would disclose about their marriage to his parents. however, she was not ready for the same because Respondent was not having any job and family members

of Respondent were not known to her. She was not aware as to how the family members would react when they would come to know about their marriage. Even then the Petitioner informed her mother about her marriage with Respondent on 13-6-1998 and went to Ahmednagar on that day. The Respondent had come to Ahmednagar to take her to his house at Khokar. It is petitioner's case that accordingly Respondent took her to Khokar at his house but parents of the Respondent did not give consent to their marriage and on the contrary expressed that they were not having sufficient income and the Respondent was not earning anything and it would not be possible for them to take the responsibility of Petitioner and Respondent. It is her case that as a result of the same Respondent took hr at his brother's house at Alibag on 14-6-1998. He was then serving there as PSI. Both of them stayed at his residence for two days. However, thereafter the bother of Respondent refused to take any further responsibility, hence, the Petitioner and Respondent went to Respondent's sister at Nagar on 16-6-1998. They informed the sister about their marriage. She also refused to take their responsibility and as such Respondent went to the house of his friend on 18-6-1998. Both of them stayed there for two days. It is petitioner's case that as the above mentioned persons refused to take responsibility and insulted them she decided to return to her maiden home and

accordingly went to Talegaon Dhamdhere.It is her case that when she went to S.T.Stand her mother and brother also met her there and then all of them went to Talegaon Dhamdhere and thereafter she never went to her matrimonial home.

5. It is Petitioner's case that Respondent never informed her that he is ready to accept her responsibility and to secure job. Nor he himself came to Talegaon Dhamdhere to take her with him. On the contrary, he only started sending lengthy letters by using threatening language that he would commit suicide if Petitioner fails to return. Not only that but he also sent two notices through Advocate. Thus according to petitioner the above conduct of the Petitioner caused mental torture to her.

6. According to the Petitioner, on 5-4-1999 at about 7-00 p.m. the Respondent came to her house with their photo album of their marriage and one poison bottle. There were several guests in their house. Respondent gave threat that if Petitioner would not accompany him he would commit suicide at the said place and on that the family members of the Petitioner intervened and prevented him from doing so. The Respondent, therefore, returned home. Similarly, on 11-4-1999 Respondent again went to her house and used filthy language and tried to take her forcibly with him.

Hence on all these grounds Petitioner filed petition for divorce on the ground of cruelty and desertion.

7. The Respondent filed his written statement at Exh.15 and admitted the marriage with the Petitioner. He also admitted that it was love marriage. He further contended that he had in fact given full idea to the Petitioner that it would be difficult for both of them to get married with the consent of respective family members. However, the Petitioner expressed her determination that if she would get married only with Respondent and otherwise she would commit suicide. She was in fact very firm on her decision. As he was also having great love and affection for the Petitioner, he agreed for the marriage and accordingly their marriage took place. He however denied petitioner's allegations that they never lived together as husband and wife and that there were no conjugal relations between them at any time. He contended that when they had been to Alibag as well as at Matheran he had conjugal relations with the Petitioner.

8. The Respondent further contended that the parents of the Petitioner were in fact not ready and willing to accept the Responded as the husband of their beloved daughter i.e. Petitioner and as such they had pressurised the Petitioner. When they found that the

Petitioner would not succumb to their pressure, the parents of Petitioner sent her to his house on 13-6-998 and thereafter they moved at various places but on 18-6-1998 Petitioner's two uncles and brother came to the Respondent and told him that if their other relatives come to know that the Petitioner has performed inter caste marriage there would be difficulty in getting petitioner's elder sister married. According to him when he had gone to his friend's place alongwith petitioner, while returning, mother and brother of the petitioner met them at Ahmednagar and Petitioner's mother again tried to convince the Respondent and requested him that Respondent should send the Petitioner to her maiden home till the time her elder daughter gets married. With a view that there should be no suffering to any other person the Petitioner and the Respondent agreed the proposal of Petitioner's mother that the Petitioner and Respondent should not keep relations between them for a period of 2 years and accordingly the Petitioner went to her maiden home. It is the contention of the Respondent that on 28-1-1997 the Petitioner's father and uncle came to him and gave threats that he should give divorce to the Petitioner. The Respondent however refused the proposal and sent notice through Advocate on 4-2-1999 as well as on 12-5-1999 and asked the Petitioner to come to his place and cohabit with him. The Petitioner, however

did not give any reply to the said notice and on the contrary filed the present false petition. He also contended that the present Petition is filed due to pressure of the parents of the Petitioner.

9. The Respondent also contended that he made several efforts to secure job. However he could not get the same. But according to him as he is cultivating his agricultural land he is in a position to maintain himself as well as the Petitioner. The Respondent therefore contended that petition for divorce is liable to be dismissed.

10. On these pleadings the learned trial Judge framed issues at Exh.15A. In order to prove her case the Petitioner wife examined herself at Exh.16 and produced certain documents, mainly letters received from the Respondent. As against this, the Respondent husband filed his affidavit of evidence at Exh.41 and also produced certain documents including letters sent by the Petitioner to him.

11. After perusing the evidence adduced by both the parties the learned trial Judge came to the conclusion that the Petitioner has failed to prove alleged cruelty and desertion. Naturally, he dismissed the petition for divorce.

12. Being aggrieved by the above mentioned judgment and order wife has filed the present appeal. In this appeal before us Mrs Anita Agarwal, learned Advocate for the Petitioner wife has urged only 3 points. Firstly, she submitted that though there was opposition of the parents of the Petitioner for marriage of Petitioner and Respondent the Petitioner went to the house of the Respondent, however, the Respondent instead of accepting the Petitioner showed his inability to shoulder her responsibility and took her to the house of his brother and then to sister that caused great mental agony to the Petitioner and the said conduct of the Respondent amounts to cruelty. She also submitted that Respondent never made any attempt to secure a job and to bring the Petitioner at his house and thus he in fact deserted the Petitioner. Lastly, she submitted that since the year 1998 the Petitioner and Respondent are residing separately. There is no possibility of both of them coming together and as such their marriage has been irretrievably broken down. She therefore submitted that appeal be allowed and the decree for divorce be passed.

13. As against this the learned Advocate for the Respondent supported the judgment and order passed by the the learned trial Judge.

14. It is not in dispute that when the Petitioner and Respondent were prosecuting their studies for B.Ed course in 1997, they came in contact with each other and intimacy developed between them and they fell in love with each other. It is very clear from the Petitioner's own pleadings that both of them took the decision of getting married stealthily at Alandi and accordingly marriage took place on 1-2-1998. It was attended only by 4 friends of Petitioner and Respondent. This was done accordingly obviously because the relatives of both sides had not given consent for the said marriage. Admittedly, even after marriage both of them were residing at Bhor separately in their respective rooms and after the examination was over the Petitioner went to her native place in April 1998 and Respondent went to his house at Kokhar.

15. At the outset it must be mentioned that though the Petitioner has alleged that conduct of the Respondent caused mental cruelty to her, we cannot ignore the fact that admittedly, after marriage both of them had stayed together hardly for 8 days. From the deposition of the Petitioner which is at Exh.16 it is very clear that she has not alleged even a single incident which occurred during the above mentioned period of 8 days which can be termed as 'cruelty'. It is needless to say that word "cruelty" has not been defined in the Hindu Marriage Act,1955. The concept

of mental cruelty has to be gathered from decided cases. From the perusal of various authoritative pronouncements, it is very clear that accepted legal meaning of cruelty is conduct of such character which causes danger to life, limb or health (bodily or mental) or gives rise to a reasonable apprehension of such danger. Without attempting to define cruelty it may be said that 'cruelty' contemplated u/s. 13 of Hindu Marriage Act is a conduct of such type that the Petitioner cannot reasonably be expected to live with the Respondent. Bearing in mind this position of law, if we see the evidence on record and in particular, letters written by both the parties to each other, it is crystal clear that the Petitioner has utterly failed to show that any particular act of Respondent caused mental cruelty to her.

16. It was vehemently argued by the learned Advocate for the Petitioner that when Petitioner had been to the house of the Respondent on 13-6-1998 she was not accepted by Respondent's parents and they expressed that within their megre income and when Respondent is not having any job it would be difficult for them to accept the responsibility of the Petitioner and Respondent. As a result of the same both of them firstly went to Alibag at the house of Respondent's brother and stayed there for 2 days. However, the brother was not ready to shoulder their responsibility

hence they went to Ahmednagar at the residence of Respondent's sister. She also showed unwillingness to shoulder their responsibility and then both of them went to the house of Respondent's friend. Merley because Respondent had taken the Petitioner accordingly at 3 places, one cannot jump to the conclusion that this conduct of the Respondent amounts to cruelty or that by such conduct he expressed his inability to maintain the Petitioner. It is pertinent to note that the Petitioner herself has stated in her deposition that she was not willing to go with the Respondent as he was not having a job and that she had told him that she would not come and reside with him so long as he is not having a job and residence. It is also worth to note that admittedly the marriage between the Petitioner and Respondent is a love marriage. Both of them were in contact with each other for quite long time and both of them were aware of their family background. Even during the time when they got married Respondent was not having any job so the reason given by the Petitioner that as Respondent was not having a job she returned to her maidan home is in fact not true and correct and it is certainly not sufficient to hold that Respondent's conduct was causing mental cruelty to the Petitioner.

17. It is pertinent to note that the Petitioner has produced on record as many as 13 letters written by

the Respondent either to her or her parents. Similarly, the Respondent has also produced some letters written by the Petitioner to him. From the careful reading of all these letters and in particular, the letters which are written by the Petitioner to the Respondent on 26-7-1998 exh.36 and on 8-8-1998 Exh.38, we find that the Petitioner had in fact not at all shown her unwillingness to reside with Respondent as he was not having job In fact, from the entire correspondence between the parties one can safely conclude that both of them due to certain circumstances decided to reside separately and for a long time they had not even disclosed to the family members that they had married with each other. Of course, from the evidence it is very clear that the Respondent's brother was aware about the love affair of the Petitioner and Respondent and even their subsequent marriage.

18. The Petitioner has clearly stated in her deposition that her parents were not having knowledge of her marriage with Respondent. Not only that the from her letter dated 9-5-1998 Exh.32 it is very clear that she disclosed about her marriage for the first time to her mother only just prior to that letter. She has clearly stated in the said letter that due to helplessness she told her mother about marriage. "----------". An

attempt has been made on behalf of the Petitioner to show that Respondent was insisting that their marriage should not be disclosed. However it is not so. On the contrary it is crystal clear from the petitioner's own pleadings that the Respondent was in fact ready to take her with him as his wife and reside at his native place. She has averred that on 22-5-1998, Respondent asked her to accompany him and to reside at his place but she did not go with him because he was not having a job. When such is the position, it cannot be said that the Respondent caused any 'cruelty' to Petitioner. Incidently, it must also be noted that it was not a case that Respondent was not having a place of abode or that he was not having any source of income. Admittedly, he was having some agricultural land. From Petitioner's own letters it is also very clear that it was very difficult to get a job. It was never her case that Respondent was not at all interested in securing job or that he was not searching for job. Having regard to this position there was no justifiable reason for the Petitioner to refuse to go with Respondent merely because of the fact that he was not having a job. In fact if we see the correspondence between the parties that was also not the real cause. Main and perhaps only reason for Petitioner not going to Respondent's house was that her parents were not agreeable for Petitioner's marriage with Respondent. The reason for the same was

two fold, firstly, because it was inter cast marriage and secondly because as per the custom and traditions of Petitioner's family it was necessary to get elder sister married first and then only the marriage of younger sister could take place. Admittedly, elder sister of the Petitioner was not married at that time. The Respondent has specifically come out with the case that on 29-6-1998 when he and Petitioner had been to Nagar S.T. Stand the Petitioner's mother and brother met them and mother requested the Respondent that Petitioner and Respondent should reside separately for a period of two years and between the said period the petitioner's elder sister would get married. It was expressed that if the relatives of the Petitioner come to know that Petitioner has performed inter caste marriage then there will be difficulty in settling Petitioner's elder sister's marriage. Respondent has also specifically stated that with a view that there should not be any loss to others and as he was having great love and affection for the Petitioner he in fact accepted the said condition. So, it appears that as a result of the above mentioned condition the Petitioner and Respondent were residing separately at their respective places even after 20-6-1998. Incidently it must be noted that the Petitioner herself has stated that on 13-6-1998 Respondent had come to Ahmednagar to take her with him. Prior to that also he had come on 22-5-1998. So, it is very clear that all along

Respondent was ready and willing to cohabit with the Petitioner. Not only that but even the Petitioner was also in fact willing to cohabit with Respondent. But as there was opposition from her family members she was constrained to stay at her maiden home. If the fact that respondent was not having a job was the real cause then when petitioner got job she could have said that both of them would then stay together and respondent can search for the job.

19. It is the case of the Petitioner that Respondent used to write lengthy letters to her and used to give threat in the letter that if she would not come and cohabit with him he would commit suicide. It is tried to be argued that such type of letters caused mental agony and cruelty to the Petitioner. However, if we carefully read all these letters written by Respondent to the Petitioner it is quite evident that it was his real genuine desire to cohabit with the Petitioner. There was nothing wrong on his part in expressing the said desire, by writing that if she does not come he would commit suicide. That only shows his frustration. By using such language, the Respondent only wanted to show that it is difficult for him to live without her. If we read the said letter as a whole then it is clear that such language not at all used to give threat or cause any mental agony to Petitioner. So we cannot jump to the conclusion that

the said writing caused mental cruelty to the Petitioner. On the contrary, when there was no justifiable reason for the petitioner to leave Respondent and she herself had taken a decision of marriage with Respondent and had shown boldness at that time, it would have been better if she had shown such boldness when her parents opposed the marriage. While considering this aspect it is pertinent to note that time and again the Respondent was requesting the mother of the Petitioner that she should send the Petitioner to him. In his letter dated 25-9-1998, he has written "----- (Petitioner's mother) ---------- (Petitioner)---------- ".So, we find that the Respondent was requesting to his mother in law that if Petitioner is to be sent after 2 years then atleast she should be allowed to write a letter. It is pertinent to note that the Petitioner's mother was not even allowing the Petitioner to write a letter to the Respondent. She was not allowed to go out of house, this can be seen from the Petitioner's own letters.

20. In the letter dated 9-5-1998 Exh.32 and letter dated 19-6-1998 Exh.35 she has written to the Respondent that she is not allowed to go out of the house. She could not even attend the marriage of her friends. It was not possible for her even to write a

letter in the presence of her parents with the result that at night she wrote the letter in the light of "Zero" power bulb. She has also written in the said letter that her father used to say that as she should see his dead body and then go to the Respondent. Thus we find that there was great mental pressure on the Petitioner of her parents and she was under their control. Of course, in the same letters she herself expressed that it is her desire to come and cohabit with Respondent and ultimately lead a successful married life.

21. Even in the letter Exh.37 dated 8-8-1996 the Petitioner has written to the Respondent "----------" (what I should do, Tai is not ready to sent me). In that very letter she has further written "----------" (Did you speak with Tai, she has no grudge against you, **caste is the hurdle**). Even in the same letter she has expressed that on the next birth day of the Respondent i.e. on 5-6-1999 they would be at their home. So, these letters of Petitioner clearly indicate that there was tremendous opposition from her parents about the marriage of Petitioner and Respondent, though in fact, she had also desire to go and reside with the Respondent. Incidently it must be noted that in one of her letters even the Petitioner has expressed that

if the situation remains as it is and it becomes difficult for her to go and reside with the Respondent it would not be possible for her to live without him and she would commit suicide. There is one letter written by Petitioner to the Respondent dated 16-7-1998 wherein also she has informed the Respondent that her relatives would be coming to him to tell him that he should not claim any right over the Petitioner. She has further advised the Respondent that when they would come, he should not be moderate or conservative otherwise he would loose her. The last letter written by the Petitioner to Respondent which is on record is dated 8-8-1998. So, one thing is certain that till that date there was absolutely nothing wrong between the relationship of the Petitioner and Respondent. Both had love and affection for each other and they were eager to cohabit with each other. The above mentioned letters obviously establish that the grievance of the Petitioner that respondent took her at different places from 13/06/1998 to 18/06/1998 and thereby indicated incapacity to maintain her and it caused mental agony to her is not true and correct. If there would have been any substance in that she would not have written such subsequent letters.

22. The Petitioner has stated that on 5-4-1999 the Respondent went to her house along with the photo

album of their marriage and poison bottle and he was insisting that he would take Petitioner with him and if that is not materialised he would consume poison. According to the Petitioner this incident occurred in the presence of several persons including her relatives as they had gathered for the marriage of her elder sister. However it must be noted that besides the bare interested word of the Petitioner in this behalf there is no other evidence to corroborate her version. So, if really such incident had occurred as alleged by the Petitioner then certainly Petitioner would have examined some witnesses to prove the said incident, but that has not happened. Same is the case in respect of the alleged incident dated 11-4-1999. What is more to be noted is that admittedly Respondent has issued notice dated 12-1-1999 to the Petitioner and called upon her to come to his house and cohabit with him. Admittedly, the Petitioner has not given any reply to the said notice. If really the incidents stated above would have occurred then normally she would have given atleast reply to the Respondent’s notice and averred the above mentioned instances. But that has also not happened. So, we are not at all inclined to accept Petitioner’s evidence in that behalf. Considering the material on record we find that what Respondent has contended in his written statement that even present petition is filed by the Petitioner under the pressure of her parents may be

true and correct.

23. From the letters which are written by the Petitioner and Respondent to each other we find that both of them had in fact great love and affection for each other. Not only that but their letters indicate that they had every concern, regard, respect, confidence for each other. Both of them were ready to sacrifice with a view to have happy married life. Both of them were optimistic and had faith that one day the situation will improve. However it is most unfortunate that though Petitioner and Respondent are both highly educated i.e. M.A., B.Ed. and sensitive they have become the victims of circumstances and social system and in particular, the opposition shown by the parents of the Petitioner for their marriage. It is also very really strange to find that parents of the petitioner who had in fact shown some progressive attitude by allowing their beloved daughter to stay alone at a different place like Bhor for education, opposed for her marriage her marriage finding that, boy selected by her is of different caste.

24. Thus from the entire evidence on record and considering the facts and circumstances of the case we have absolutely no hesitation to hold that the Petitioner has miserably failed to prove that Respondent is guilty of cruelty or desertion as

contemplated under Section 13(1)(ia),(ib) of Hindu Marriage Act, 1955.

25. The learned Advocate for the Petitioner argued before us that the marriage between the Petitioner and Respondent has irretrievably broken down and as such divorce be granted. For this proposition, she has placed reliance on a case Dugraprasad Tirpati V/s Arundhati Tripati **(2005) 7 SCC 353**. Careful reading of the said authority shows that the facts of the said case and facts of the case in hand are quite different. In that case the family court had observed that wife is not only cruel but had deserted the husband since more than 7 years and on that ground granted divorce. So, under such circumstances the Apex Court observed that the marriage was irretrievably broken down and as such divorce has to be granted. While in the instant case we find that both the spouses are in fact having great passion and earnest desire to live with each other but only circumstances have compelled them to reside separately. So, under such circumstances the ruling cited by the learned Advocate is of no use to the present Petitioner.

26. The learned Advocate has also drawn our attention to a case Chandrakala Trivedi V/s Dr.S.P.Trivedi **(1993) 4 SCC 232**. The facts of the said case are also

quite different from the facts of the case in hand. In that case, both the spouses had made serious allegations against each other about the character and having relations with some other persons. So, finding that the marriage became dead, the Apex Court granted decree for divorce and that too when the husband agreed to provide one bed room flat and cash amount of Rs.3/4 lacs. So, in a way the matter was compromised accordingly. So, above cited case is also of no use to the Petitioner. The learned Advocate for the Petitioner has also relied on a case Santkumar Agrawal V/s Nandini Agrawal **1990(1) SCC 475** to substantiate her argument with regard to cruelty and desertion, However, the facts of the said case are very different from the facts of the case in hand. In this case there is not a slightest evidence regarding the cruelty and desertion as contemplated by Section 13(i)(ia) and (ib).

27. In view of the above,it is very clear that the learned trial Judge has rightly refused to grant decree for divorce and correctly dismissed the petition. There is no necessity to interfere with the same.

28. While parting with this appeal we only hope that parents of both the spouses and others who are concern would realise that they are living in 21st century.

Petitioner and Respondent are highly educated and sensitive. They got married with each other after knowing each other fully. They were ready to sacrifice anything so as to have happy married life. So, the elderly persons in the family should not become instrumental in creating a situation as a result of which the Petitioner and Respondent would be required to stay separately.

29. Thus, the appeal is dismissed. Under the circumstances of the case parties to bear their own cost.

(S.R.SATHE,J.) **(S.B.MHASE,J)**